NO. 91-167

FILED
JUL 22 1991
OFFICE OF THE CLERK

In the Supreme Court of the United States

JULY TERM, 1991

B. L. PEREGOY, ET ALS,
PLAINTIFFS - APPELLANTS,

VS.

AMOCO PRODUCTION COMPANY
A Division of Standard Oil
Of Indiana, ET ALS,
DEFENDANT - APPELLEES.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether the District Court and Appeals Court were in error in finding that Plaintiffs' suit was barred by state decisis, collateral estoppel and res judicata.

Whether the District Court and Appeals Court were in error in ordering sanctions against Plaintiffs and their counsel.

CERTIFICATE OF INTERESTED PERSON

Pursuant to Local Rule 28.2.1, the undersigned counsel of record for Plaintiffs - Appellants, certifies that the following listed persons have an interest in the outcome of this case.

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I

IN THE

SUPREME COURT OF THE UNITED STATES

B. L. PEREGOY, ET ALS,
PLAINTIFFS - APPELLANTS,

vs.

AMOCO PRODUCTION COMPANY
a Division of Standard Oil
Of Indiana, ET ALS,
DEFENDANTS - APPELLEES.

WRIT OF CERTIORARI

The Plaintiffs-appellants, by their respective counsel, Max E. Wilson, petition for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit, which affirmed the decision of the United states District Court for the Eastern Defendants' Motion for Summary Judgment.

OPINIONS BELOW

The Fifth Circuit Decision granting Defendants'-Appellees' Motion for summary Judgment is reported at 742 F. Supp. 372, (1991) and reprinted as Appendix A.

JURISDICTION

The Decision of the United States Court of Appeals for the Fifth Circuit is dated June 18, 1990.

STATEMENT OF THE CASE

On February 14, 1989, Plaintiffs filed their suit in the District Court for the Eastern District of Tennessee against the Defendant, except Defendant Chevron USA.

The suit alleges that Plaintiffs are heirs of Pelham Humphries, who was owner of a grant of land situated in Jefferson County, Texas. That their ancestor died interstate,

unmarried and without issue. That Defendants have extracted oil, gas and other minerals from the Pelham Humphries league of land. The suit seeks an accounting of all minerals extracted from the subject league and damages.

On may 18, 1989, the District Court in Tennessee ordered a transfer of the case to the District Court for the Eastern District of Texas. Plaintiffs promptly filed a Petition for Emergency Writ of Mandamus to the United States Sixth circuit Court of Appeals seeking to have the Court reverse the Order of Transfer. However, the Circuit Court of Appeals denied the Petition.

The Defendants filed Motions for Summary judgment and plaintiffs filed Motion to Amend and make Chevron USA a Party Defendant, as well as, Motion to retransfer the case to the District Court in Tennessee, and a Motion for Certification of a Class Action.

On December 6, 1989, the District Court held a hearing to consider the Motions.

Plaintiffs' Motion to Retransfer was denied; the Motion to Amend the Complaint was allowed and the Court took Plaintiffs' Motion for Certification of Class Action under advisement as it did Defendants' Motion for Summary Judgment.

On June 18, 1990, the District Court entered its Order and Memorandum Opinion stating there was no genuine issue of material fact and that this action is barred by res judicata, collateral estoppel, stare decisis and this Court's 1968 trilogy of Opinions contained in the decision of Humphries v. Texas Gulf Sulphur Co., 393 F. 2d 69 (5th Cir. 1968).

Defendants filed Motions for Sanctions and on August 9, 1990, the Court held another hearing, and subsequently entered an Order providing for sacntions of both Plaintiffs and their counsel.

Plaintiffs perfected their appeal and the United States Fifth Circuit Court of Appeals

affirmed the District Court's Order decision Plaintiff's case.

REASONS FOR GRANTING THE WRIT

The conclusion read by the District Court in granting Summary Judgment, affirmed by the Fifth Circuit, is in conflict with the stated opinion of this Court as well as of respected commentators on federal procedure.

It would be unfair, unconstitutional, and in violation of every established precedent to preclude Plaintiffs from maintaining the present action merely because other parties -- who were utter strangers, as far as Plaintiffs are concerned -- happened to bring an earlier lawsuit.

FIRST ISSUE: WHETHER THE DISTRICT COURT AND THE FIFTH CIRCUIT WAS IN ERROR IN FINDING THAT PLAINTIFFS' SUITS WERE BARRED BY STARE DECISIS, COLLATERAL ESTOPPEL AND RES JUDICATA.

STARE DECISIS:

There are two separate and distinct reasons why stare decisis does not apply here. First, the decision in Humphries v. Texas Gulf Sulphur co., 393 F. 2d 69 (5th Cir. 1968), rested upon an adjudication of fact rather than law; and the doctrine of stare decisis does not apply to adjudication of fact. Second, Plaintiffs should have been represented in the Humphries litigation but were not. Hence, it would be both unsafe and a denial of due process to deny Plaintiffs their day in Court because of the result in that litigation.

The Humphries decision adjudicated an issue of fact. Under the District Court's interpretation, the doctrine of res judicata and stare decisis are functionally equivalent. This interpretation is at odds with Federal Law:

> That persons similarly situated should be treated alike is an objective of stare decisis. But a theory under which a judgment in one case inexorably determines the judgment in another

> indistinguishable on its substantive facts would confuse the principle of stare decisis with those of res judicata.

IBJ Moore, J. Lucas and T. Currier, Moore's Federal Practice sec. 0.402(2) at 28 (2nd 1989) (footnote omitted); e.g. Migues v. Fibreboard Corp., 662 F.2d 1182, 1187-89 (5th cir., 1981) (the Fifth Circuit's decision upholding a finding that asbestos products were unreasonably dangerous was not stare decisis in subsequent asbestos litigation).

In Colby v. J.C. Penney Co., 811 F. 2d 119 (7th Cir. 1987) for example, a female employee of the J.C. Penney Company filed a Title VII action against Penney alleging that Penney's "head of household rule", whereby an employee could elect coverage for the employee's spouse if the spouse earned less than the Penney employees, discriminated against female employees. During the pendency of the plaintiff's action, the Equal Employment

Opportunity commission (EEOC) had lost in a parallel suit filed in Detroit also

challenging Penney's head of household rule on the very same grounds. Ruling that the EEOC decision was stare decisis in the Plaintiff's action, the District Court entered an Order of Dismissal, precisely as the Court has done in the case at bar. On appeal, though, the Seventh Circuit reversed:

> (T)he fact that the Detroit case involved the identical issue in a lawsuit brought against the identical defendant by a Plaintiff having the same interest as Mrs. Colby in a reason for the District Court in the present case to have given serious consideration to the Detroit decision -- but not a reason to invoke stare decisis and give the decision complete deference automatically, as the Court appears to have done. Id. at 1124.

The District Court concludes that stare decisis applies with special force to decisions involving land titles. In the abstract, this proposition is eminently sound. Whether it applies here, though, is another matter altogether. The cases relied upon by the District Judge involve rulings which construe the meaning of legal instruments, see, e.g., Pomeroy Oil Corp. v. Pure Oil Co.,

279 S.W. 2d 886 (Texas Cir. App -- Waco 1955, Writ ref'd; (prior construction of Deed); Mitchell v. Mitchell, 303 S.W. 2d 352, 354 (1957) (Construction of a Will); Pope v. Southhampton Civic Club, 539 S.W. 2d 165 (Tex. Civ. App. -- Houston (1st Dist.) 1976, No Writ) (Construing restrictive covenants).

Unlike the interpretation of legal instruments which is indisputably a ruling of law, the basis of the Humphries decision -- i.e., that the occupant's prolonged possession created the presumption of a grant, see 393 F. 2d at 72 -- is an adjudication of fact. Hence, as is illustrated by Swilley v. McCain, 374 S.W.2d 871 (Tex. 1964),doctrine of stare decisis is inapplicable.

United States v. Cocke, 399 F. 2d 433, 448 (5th Cir. 1968), Cert. denied, 394 U.S. 922 (1969). In particular, "the values of stability and judicial economy promoted by stare decisis must yield when reason and fairness so compel." American Indian

Agricultural Credit Consortium v. Standing Rock Sioux Tribe, 780 F. 2d 13374, 1378 (8th Cir. 1985).

In the case at bar, the District Court's attempt to use the Humphries case as stare decisis is unfair in the extreme. The Defendants, in the present case, could have invoked Fed. R. Civ. P. 19 in the Humphries case so as to ensure that all the heirs of Pelham Humphries, and solely the Plaintiffs in that actions -- who may not even have been true heirs of Pelham Humphries, insofar as the record discloses -- were joined in the action. The District Court has made much to do of the importance of stare decisis in actions where property rights are at issue. Be that as it may, the court overlooked one critical point. In actions seeking to adjudicate property rights, it is usual and customary to join as parties therein all persons claiming an interest in the property.

The Plaintiffs in Humphries did not seek to ensure that all the heirs of Pelham Humphries were represented in that action. Instead, they were in it for themselves -- a fact which casts grave doubt on the District Court's sanguine assurances that Plaintiffs herein were adequately represented in the Humphries case. Nor did the Defendants in the Humphries case seek to ensure, by means of Rule 19 or otherwise, that all the heirs of Pelham Humphries were represented. What the Defendants have done, in short, is to rely on precedent in which only a small fraction of the interested parties were represented.

Plaintiffs do not deny that court rulings adjudicating property rights are ordinarily entitled to strong stare decisis effect. But this is no ordinary situation. The respect which court rulings adjudicating property rights usually enjoy is due to the procedural safeguards that are utilized in such rulings to ensure that all potential claimants are

represented. Who ever heard of a quiet title action, for instance, where only a select few claimants were named as parties? Property rulings are usually entitled to strong stare decisis effect, in other words, because they usually are decided only after all potential claimants have been joined and afforded an opportunity to participate. That was not done in the Humphries case, either by the Plaintiffs therein or by the Defendants. It would be manifestly unjust, therefore, to permit the Defendants to take advantage of their own dereliction in failing to invoke Rule 19 by now citing the Humphries decision as binding precedent.

It would be more than unfair, moreover; it would be an unconstitutional denial of due process. "No interest which could be served by so rigid an adherence to stare decisis is superior to the demands of a system of justice based on a considered and consistent

application of the Constitution." Graves v. Schmidlapp, 315 U.S. 657, 665 (1942). The failure to join an indispensable party under Rule 19 has been equated with a jurisdictional defect:

> In diversity cases, the question of indispensable parties is inherent in the issue of federal jurisdiction, the determination of which should never await states a cause of action. Jurisdictional questions come first in the orderly disposition of a case. A precarious jurisdiction that limits the scope of judicial decision on the merits cannot be entertained.

Calcote v. Texas Pacific Coal & Oil Co., 157 F. 2d 216, 218 (5th Cir.), Cert. denied, 329 U.S. 782 (1946). Strictly speaking, the nonjoinder of a Rule 19 claimant is not a jurisdictional matter, Jim Walter Corp. v. FTC, 625 F. 2d 676 (5th Cir. 1980), but it is an omission of equivalent magnitude: "(A Rule 19) joinder must be made before a decision can be entered." Id. at 681 (emphasis added). This is so because of the due process implications of failing to join a Rule 19 party. And, just as a decision rendered

without subject-matter jurisdiction is not entitled to binding effect, so likewise a decision rendered without the joinder of indispensable parties is not entitled to binding effect. Thus, in his discussion of Rule 19, Professor Moore States as follows:

> A court cannot render a valid judgment binding upon a person over whom it has not obtained requisite jurisdiction -- in personam, quasi in rem, or i rem, as the case may be, unless that person is in privity with or is adequately represented by a party over whom the court has jurisdiction. To extend the judgment in violation of these principles and make it binding upon the person not before the court would constitute a denial of due process as to the absent party. Such a judgment is not, as to the absent party, entitled to full faith and credit.

3A J. Moore, J. Lucas & G. Grotheer, Moore's Federal Practice, 19.01-1(2) at 19-24 to 19-25 (2d ed. 1989) (emphasis added; footnotes omitted); accord Love v. Woerndell, supra; see also 18 C. Wright, A. Miller & E. Cooper, supra, 4457 at 500 n. 17 ("(t)he Court's well-founded doubt that due process

would permit issue preclusive should apply to the state decisis theory").

Regardless of whether one labels the applicable doctrine estoppel, fairness, justice, due process, or simply common sense, the facts herein compel the same conclusion. Having excluded Plaintiffs from representation in the Humphries litigation, the Defendants cannot now cite the results of the litigation as stare decisis in the case at bar.

COLLATERAL ESTOPPEL:

The District Court concluded that Plaintiff's suit is barred by collateral estoppel. Although differing in a number of respects, the doctrine of res judicata and collateral estoppel are alike one critical way: both require that the party against whom the doctrine is invoked have had a fair and full opportunity to litigate the issue in the prior proceeding. NAACP, Detorit Branch v.

Detroit Police Officers Association, 821 F. 2d 328, 330 (6th Cir. 1987). Plaintiffs did not have a full and fair opportunity to present their claims in the Humphries case. They were neither parties to that action, nor in privity with parties to that action. Accordingly, it would be unfair and a violation of Plaintiff's due process rights to apply collateral estoppel in the case at bar.

RES JUDICATA:

One indispensable requirement for res judicata is an identity of parties. That is, the parties to the present action must also have been parties to Humphries v. Texas Gulf Sulphur Co., supra, and its companion cases, or in privity with those parties. This requirement is not met in the case at bar.

On Page Four (4) of the Trial Court's Memorandum Opinion (Transcript of Court Record, Page 720), the Court in footnote (3)

states, "B.L. Peregoy, on of the Plaintiffs here, was a Plaintiff in Glover. The court i referring to the case of Glover v. McFaddin, 205 F. 2d 1 (5th Cir.), Cert. denied, 346 U.S. 900 (1953).

At the hearing on sanctions, Plaintiff, B.L. Peregoy testified that he was not a party Plaintiff in the Glover case. (Transcript of Hearing on Sanctions, Page 28).

There is no evidence that Plaintiffs were parties to any previous litigation. Defendants concede in their Briefs filed in the District Court that there is no indication in the Humphries opinion that Plaintiffs were parties thereto, but contend that "it is conceivable" that Plaintiffs were involved in the previous litigation. Proof is required, and there is none here.

Defendants also contend before the District Court that Plaintiffs in the case at bar are in privity with the Plaintiffs in Humphries or, in the alternatives, that

Plaintiffs are barred by the so-called "virtual representation" doctrine. Neither argument is correct.

The privity theory rests upon the assertion that Plaintiffs "are in a mutual and successive relationship" to the same rights of property that the Plaintiffs in Humphries sought to enforce. The key term here is "successive". Had Pelham Humphries himself been a party to the action relied upon this might be more accurate but he was not. The Plaintiffs in Humphries were descendants of Pelham Humphries. Plaintiffs in the present case are likewise here descendants of Pelham Humphries. But that does not make plaintiffs descendants of the Plaintiffs in Humphries. The Plaintiffs here are perhaps second cousin to those in Humphries, or perhaps uncles several times removed. While the plaintiffs in Humphries may be kin to those in the case at bar, there is nothing to indicate that they are lineal predecessors.

Plainly, then, Plaintiffs here do not stand in a success relationship to the Plaintiffs in Humphries, as is illustrated by Clark v. Amoco Production Co., 794 F. 2d 967 (5th Cir. 1986). That case, like the present one, involved a title claim to the Spindletop Oil Field. In 1982, James Clark and Dan Profitt brought individual actions, as heirs of the estate of James R. Meadors, claiming an interest in minerals extracted from Spindletop. After they lost, Clark and Profitt then instituted another action claiming an interest in Spindletop, but this time as administrators of Meador's estate on behalf of themselves and the other Meadors heirs. The District Court in the second action granted a Rule-12(b)(6) Motion, but this court reversed. One of the questions before this Court was whether the meadors heirs other than Clark and Profitt were successors to the latter parties' interest in the Meador's estate so as to be bound by the

earlier litigation. This Court held that they were not:

> The remaining Meadors heirs are not successors to Clark and Proffit's interest in the estate. The remaining heirs have concurrent interests in the property. 794 F. 2d 973.

In like fashion, Plaintiffs in the case at bar are not successors to the Plaintiffs in Humphries.

The District Court's conclusion that Plaintiffs are somehow bound by the doctrine of virtual representation is error. The virtual representation doctrine has its roots in probate proceedings, where the need to bind nonparties is compelling, and where specific protection for their interest is provided:

> The virtual representation phrase is drawn from probate proceedings, in which it is often necessary to establish a procedure that will bind persons unknown, ascertained, or not yet born. The need to bind nonparties in such circumstances is apparent. Protection is provided for the nonparties, moreover, by requiring representation by someone with clearly aligned interests.

Even aside from its misplaced reliance upon the virtual representation doctrine, the Trial Judge's suggestion that a similarity or identical interest between the Plaintiffs in Humphries and the Plaintiffs here should be a bar to the present action is incorrect for two reasons: First, mere similarity or identity of interest is not enough. For example, in Humphreys v. Tann, 487 F. 2d 666 (6th Cir. 1973), Cert. denied, 416 U.S. 956 (1974), several passengers in a TWA jet were injured when the plane collided with another aircraft owned by the Tann Company. One of the passengers brought suit against Tann, and lost. When another passenger later brought suit against it, Tann contend that the earlier passenger's unsuccessful action was a bar to the second passenger's action. Both passenger's interest of course were the same, i.e. to establish that Tann had been negligent. Nevertheless, the Sixth Circuit held that the District Court had been in error

in dismissing the second action on that ground:

> We share the concern of the District Court for the crowded dockets of Federal Courts and the proper utilization of judicial time. However, we do not believe that this consideration can over come the due process objection(.) 487 F. 2d 671.

The District Court's assumption that the Plaintiffs in Humphries had an interest identical to the to Plaintiffs here, merely because both groups of Plaintiffs are related, is unsound. Even close family relationships are not sufficient to establish privity with a party in a prior suit. Freeman v. Tester Coggins Trucking Co., Inc., 771 F. 2d 860, 863 (5th Cir., 1985). There is, to-be sure, an overlap of interest; but there are also adverse interests involved. It is hardly an unprecedented occurrence for someone seeking ownership of property to attempt to exclude family members who might otherwise be entitled to share in the claim. That, after all, is why guardians ad litem are appointed in

probate proceedings. And, even though the Plaintiffs in two different actions may have similar interests, the fact that their interest may diverge in other respects precludes the application of res judicata. Hadley v. Bacon, 828 F. 2d 1272, 1277 (8th Cir. 1987).

Res Judicata is, ultimately, a doctrine of fairness and hence should not be applied when it would result in manifest injustice to a party. United States v. La Fatch, 565 F. 2d 81, 83-84 (6th Cir. 1977), Cert. denied. 435 U.S. 971 (1978). It would be unjust indeed to deny Plaintiffs their day in Court while others have had an opportunity to litigate their claims to the Spindletop Oil Field, that fact does not justify dismission Plaintiffs' claims. No matter how often an issue has been litigated by others, prior adjudication cannot justify slamming the Courthouse door in the face of someone who was not a party of the prior actions. Such was precisely the Supreme

Court's admonition in Blonder - Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313 (1971), where the application of collateral estoppel was at issue:

> Some litigants - those who never appeared in a prior action - may not be collaterally stopped without litigating the issue. They have never had a chance to present their evidence and arguments on the claim. Due process prohibits stopping them despite one or more existing adjudication of the identical issue which stand squarely against their position, 402 U.S. at 329.

These same considerations apply to re judicata as well. Kremer v. Chemical Construction Corp., 456 U.S. 461, 480 - 81 N. 22 (1982).

SECOND ISSUE: WHETHER THE DISTRICT COURT WAS IN ERROR IN ORDERING SANCTIONS AGAINST PLAINTIFFS AND THEIR COUNSEL.

The sanctions ordered by the District Court were premised upon findings that the Plaintiffs' action was barred by stare decisis, collateral estoppel, res judicata and

this Court's 1968 decision in the trilogy of Humphries cases.

It is apparent from the review of this Court's decision in Thomas v. Capital Security, Inc., 836 F. 2d 88 (5th Cir. 1988) that sanctions are appropriate when a cause is dismissed by reason of res judicata. However, as Plaintiffs have stressed in their argument, supported by the authorities in answer to the first issue herein; they believe these reasons should preclude sanctions. For the sake of any reiteration, Plaintiffs simply rely on what they have previously stated regarding stare decisis, collateral estoppel, res judicata and the Humphries case.

CONCLUSION

For the reasons stated, Petitioners respectfully petition this Court to grant a Writ of Certiorari to review the decision of

the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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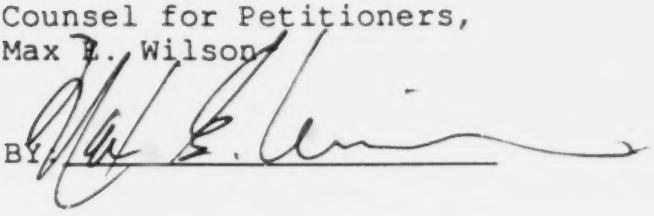
BY: 

CERTIFICATE OF SERVICE

The undersigned certifies that a true and perfect copy of the foregoing Petition for Writ of Certiorari has been served upon all counsel of record, by forwarding the same to them at their addresses in the U.S. Mail with proper postage thereon.

THIS the 22nd day of July, 1991.

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

CIVIL ACTION B-89-00423-CA

B.L. PEREGOY, ROBERT H. CARR, DOUGLAS C. PEREGOY, BARBARA ANN PEREGOY §

VS. §

AMOCO PRODUCTION CO., a Division of Standard Oil of Indiana; MOBIL OIL CORPORATION; PHILLIPS PETROLEUM CO.; TEXACO INC.; CHEVRON, INC. §

MEMORANDUM OPINION

"(T)he Pelham Humphries litigation is over and the Humphries heirs have no title in the league of land . . . "

Judge Thornberry's holding in *Humphries v. Texas Gulf Sulphur Co.*, 393 F.2d 69 (5th Cir. 1968), has a hollow ring to the plaintiffs here who are seeking to exhume the Pelham Humphries dispute two decades after this definitive epitaph.

On February 14, 1835, Pelham Humphries received a land grant for one league of land in Southeast Texas from the Government of Coahuilla and Texas. He conveyed it in 1836 to William Inglish, who's children or heirs conveyed it to W.P.H. McFaddin in 1883. 393 F.2d at 70-71.

The Humphries litigation, spawned by the famed Spindletop oil field discovery, has long persisted in the face of numerous orders, decrees, and final judgements.[1]

This suit was filed in the United States District Court for the Eastern District of Tennessee on February 14, 1989. "Plaintiffs are the legal heirs of Pelham Humphries,

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[1] *Glover v. McFaddin*, 205 F.2d 1 (5th Cir.), cert. denied, 346 U.S. 900 (1953); *McBride v. Gulf Oil Corp.*, 292 S.W.2d 151 (Tex. Civ. App. - Beaumont 1955, writ ref'd n.r.e.); *Foster v. Gulf Oil Corp.*, 335 S.W.2d 845 (Tex. Civ. App. -- Beaumont 1960, writ ref'd n.r.e.); *Jones v. McFaddin*, 382 S.W.2d 277 (Tex. Civ. App. - Texarkana 1964, writ dism'd w.o.m.), appeal dism'd, 382 U.S. 15 (1965); *Green v. Texas Gulf Sulphur Co.*, 393 F.2d 67 (5th Cir.), cert. denied, 393 U.S. 977 (1968); *Beasley v. McFaddin*, 393 F.2d 68 (5th Cir.), cert. denied, 393 U.S. 842 (1968); *Humphries v. Texas Gulf Sulphur Co.*, 393 F.2d 69 (5th Cir. 1968). With the exception of *Forester*, each case resulted in summary judgment for defendants.

Deceased," (Complaint ¶ 3), and are seeking "an accounting for all minerals extracted from the league" which is asserted to be "in excess of Two Hundred Billion Dollars" from the defendants (Complaint, ¶ 5).

Judge Thomas Hull transferred the suit to the Eastern District of Texas on May 18, 1989. Plaintiffs sought a writ of manadamus from the Sixth Circuit to require Judge Hull to retain this Texas land case in East Tennessee. The mandamus was denied with a written opinion September 22, 1989. In *Re Peregoy*, 885 F.2d 349 (6th Cir. 1989).

The Sixth Circuit held:

> We also conclude that summary judgment would have been appropriate in this matter on the basis of res judicata or collateral estoppel. The Humphries heirs have had their day(s) in court, and then some.

Id. at 352.

All defendants have file motions for summary judgment under Rule 56(b), FED. R.

CIV. P.[2] The plaintiffs have filed a motion for class action certification under FED. R. CIV. P. 23.

The United States Court of Appeals for the Fifth Circuit has held that when appropriate, a district court can rule on motions for summary judgment before deciding whether to certify the case as a class action. *Floyd v. Bowen*, 833 F.2d 529, 534-35 (5th Cir. 1987). See also, *Marx v. Centran Corp.*, 747 F.2d 1536, 1552 (citing *Jacobs v. Grountsley*, 494 F.2d 513, 514 (5th Cir.), cert. denied, 419 U.S.868 (1974); *Miller v. Mackey International, Inc.*, 452 F.2d 424, 428-29 (5th Cir. 1971)).

Summary judgment is the appropriate method to dispose of this suit. *Celotex corp. v. Catrett*, 477 U.S. 317 (1986), therefore the court will not address the class action question.

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[2] Texaco Inc. has actually moved for dismissal under FED. R. CIV. P. 12(b)(6); the motion is hereby considered as a motion for summary judgment under FED. R. CIV. P. 56. See FED. R. CIV. P. 12(b)(6).

At least seven reproted cases have finally adjudicated claims of the heirs of Pelham Humphries, or claims arising out of the Humphries' claims. The plaintiffs were unsuccessful in every case. (See FN 1.)

In *Glover v. McFaddin*, 205 F.2d 1 (5th Cir.) cert. denied, 346 U.S. 900 (1953), the plaintiffs claimed title to the league of land through their ancestor Pelham Humphries, and his brother William and sister Betsie Janie Humphries. The united States District Court for the Eastern District of Texas granted summary judgment for the defendants. The Fifth Circuit affirmed.[3]

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[3] B.L. Peregoy, one of the plaintiffs here, was a plaintiff in *Glover*. Magnolia Petroleum Company, Gulf Oil Corporation, Gulf Refining Company, Stanolind Oil Purchasing Company, were defendants. Judgment at 2-8, *Glover v. McFaddin*, 205 F.2d 1 (5th Cir.), cert. denied, 346 U.S. 900(1953). The defendants in *Glover* named above were predecessors to Amoco, Mobil, and Chevron, defendants in the instant case (Affidavits Shannon, Oates, Jr. and Messer). Texaco was named party in *Green* and lawsuits (Affidavit of Cowart). The predecessor companies of Amoco, Mobil, and chevron were also parties to *Beasley* (judgment at 4); and *Green* (judgment at 3); Pan American Petroleum Corporation, a predecessor to Amoco, was a defendant in Humphries (judgment at 1) (Affidavits of Shannon, Oates, and Messer, *supra*).

This entire matter was decided by the Fifth Circuit in 1968 for the "final" time. All of the appellants in the *Humphries* case, and the appellants in the two companion cases,*Green, et al v. Texas Gulf Sulphur Co., et al*, 393 F.2d 69 (5th Cir.), cert. denied, 393 U.S. 977 (1968), and *Beasley, et al v. McFaddin, et al* 393 F.2d 68 (5th Cir.), cert. denied, 393 U.S. 842 (1968), claimed as heirs of Pelham Humphries. These cases have been referred to as the "trilogy" of the Humphries claims.

In each opinion, the Fifth Circuit held in favor of defendants:

> "The Pelham Humphries litigation is over and the Humphries heirs have no title in the league of land." *Humphries*, at 75.
>
> "All Humphries heirs, past, present, and future, are without title." *Beasley*, at 69.
>
> "All Humphries heirs are without title and this renders a remand unnecessary." *Green*, at 68.

The Fifth Circuit clearly indicated these three opinions were to be considered together:

> "Our reasoning in *Humphries* and *Beasley* confirms that all Humphries heirs are without title." *Green*, at 68.
>
> "(W)hat is said here is also dispositive of the *Beasley* and *Green* appeals." *Humphries*, at 71.

Texaco, therefore, was expressly affected by the companion case, *Humphries*.

The Fifth Circuit's trilogy makes it unnecessary for this court to compare the parties to this action with the parties to previous actions. Such comparisons underscore the futility of the present action. Although plaintiffs in this case now maintain the previous cases do not preclude them from pursuing the present claims "as the heirs of Pelham Humphries," This court believes that when the Court of Appeals said "all Humphries heirs," it mean <u>all</u> Humphries heirs, "past, present, and future."

There are three distinct grounds which, considered separately, support summary judgment for defendants. These are (1) *stare decisis*; (2) *collateral estoppel*; and (3) *res judicata*.

I.

Stare decisis gives force of law to precedent, and is broader than the doctrines of *res judicata* and *collateral estoppel*. *Stare decisis* does not require commonality or privity among the parties to the present or prior litigation. When a reviewing court issues a final ruling on a matter of law before it, "such determination is binding and conclusive in all subsequent suits involving the same subject matter, whether the parties and the property are the same or not." *Pomeroy Oil Corp. v. Pure Oil Corp* ., 279 S.W.2d 886, 888 (Tex. Civ. App. - Waco 1955, writ ref'd); *Sturgeon v. Strachan Shipping Co.*, 698 F.2d 798, 800 (5th Cir. 1983). Each of the seven Spindletop cases reported were final decisions concerning the claim for Pelham Humphries and his heirs to Spindletop.

Stare decisis is particularly applicable in cases involving claims of title to land because of the importance of establishing

stability of land sale, transactions and title. *Confederated Salish and Kootenai Tribes v. Namen*, 665 F.2d 951, 960 (9th Cir.), cert. denied, 459 U.S. 977 (1982).

The importance of *stare decisis* in land and title disputes was stated the Supreme Court of the United States in 1923. Justice Van Devanter, writing for the majority, declared:

> Where questions arise which affect titles to land it is of great importance to the public that when they are once decided they should no longer be considered open. Such decisions become rules of property, and many titles may be injuriously affected by their change. . . Doubtful questions on subjects of this nature, when once decided, should be considered no longer doubtful or subject to change.

United States v. Title Ins. Co., 265 U.S. 472, 486-87, 44 S. Ct. 621, 68 L. Ed. 1110 (1923); (citing *Minnesota Co. V. National Co.*, 3 Wall. 332, 334 (1865).

Stare decisis applies in general to land cases, and it is even more germane when the ruling involves the claims of the same category of plaintiffs to the same land as in

this case. See, *Pomeroy Oil Corp. v. Pure Oil Co.*, 279 S.W.2d 886 (Tex.Civ. App. -- Waco 1955, writ ref'd); *Mitchell v. Mitchell*, 3303 S.W.2d 352, 354 (1957) (construction of a will); *Pope v. Southhampton Civic Club*, 539 S.W. 2d 165 (Tex Civ. App. -- Houston 1st Dist.] 1976, no writ) (construing restrictive covenants).

This court is bound by decisions of the Court of Appeals for the Fifth Circuit. There can be no stronger precedent than the Fifth Circuit's "trilogy" rejecting the claims of the Humphries heirs, and this court is bound by those holdings. What was true in 1968 is true today.

The plaintiffs in this suit make the same claims to the same property made in *Humphries v. Texas Gulf Sulphur Co.*, 393 F.2d 69 (5th Cir. 1968) - claims to the title to land, claims to minerals produced from the land, and, once again, claims by the plaintiffs that they are heirs of Pelham Humphries.

Therefore, summary judgment is GRANTED as to all defendants by reason of *stare decisis*.

II.

Collateral estoppel also requires the defendants' motions for summary judgment to be granted. The elements of collateral estoppel, or issue preclusion, are:

> (1) the issue at stake is identical to the one involved in the prior litigation;
>
> (2) the issue has been actually litigated in the prior litigation; and
>
> (3) that the determination of the issue in the prior litigation has been critical and necessary part of the judgment in that earlier action.

United States v. "Monkey," 725 F.2d 1007, 1010 (5th Cir. 1984); *Wehling v. Columbia Broadcasting system*, 721 F.2d 506, 508 (5th Cir. 1983).

The controlling issue in each prior suit by the Humphries heirs has been their claim to the land as heirs of Pelham Humphries. The prior decisions on this issue necessarily determines the other issues i the case. When

the tactical efforts of plaintiffs and their counsel are stripped away, the central issue is whether the plaintiffs as heir shave any claim to the land involved in this suit. If they do not, all other issues become moot. The trilogy cases make it clear plaintiffs, as heirs of Pelham Humphries, have absolutely no claim to the league of land in question. Further, as in this case, the determination of title to the land was the critical and necessary part of the judgments of earlier actions.

For collateral estoppel to apply, these plaintiffs must have been either parties or in privity with the parties to the prior lawsuits. See, *Hardy v. Johns-Manville Sales Corp.*, 681 F.2d 334, 338-39 (5th Cir.1982). The Fifth Circuit has held that parties are sufficiently close to be precluded form re-litigation when (a) they have succeeded to a party's property interest; (b) they controlled the prior litigation; or(c) their interests

were adequately represented by a party in the original suit. Id. at 339.

As the Fifth and Sixth Circuits have already determined, the heirs of Pelham Humphries have "had their day(s) in court, and then some." In *Re Peregoy*, 885 F.2d 349 (6th Cir. 1989). *Humphries v. Texas Gulf Sulphur Co.*, 393 F.2d 69 (5th Cir. 1968); accordingly, collateral estoppel supports summary judgment for all defendants, and their motions are therefore Granted.

Defendants Amoco, Mobil, Chevron, and Texaco also contend *res judicata* bars plaintiffs' suit.

Res Judicata, or claim preclusion, is available to most of the defendants in this case. Claim preclusion applies where

(1) there is an identity of parties between the two proceedings;

(2) both suits involved the same claims;

(3) the prior judgment was rendered by a court of competent jurisdiction; and

(4) the decision in the prior proceeding was a formal judgment on the merits.

Clark v. Amoco Production Co., 794 F.2d 967, 972 (5th Cir. 1986).

The first element regarding defendants Amoco and Mobil is satisfied; predecessor companies of these defendants were parties in *Glover, Green,* and *Beasley*. The predecessor of Amoco was also a defendant in *Humphries*.. (See affidavits of Oates and Shannon).

Chevron is the successor to Gulf Oil Corporation. Gulf was defendant in all of the prior suits except for *Humphries*. (See affidavit of Messer). Texaco, too, was a party to *Green* and *Beasley*, as noted *supra*.

The second element is present. There is clearly identity of interests between the present plaintiffs and those in prior Spindletop suits. In every case, it is only by establishing that Pelham Humphries died interstate while vested with title to the league of land where the Spindletop field is located that <u>any</u> Humphries heir could recover. No matter what arguments exist between the

factions of Humphries heirs, they all must prove that Pelham Humphries died while vested with title to the Humphries Survey. If plaintiffs fail on this point, no heir, no matter what the relationship to Pelham Humphries, can recover.

Plaintiffs cannot have a valid claim to the land if Pelham Humphries had o interest in it at his death. By claiming interest in the Humphries Survey by virtue of ancestral ties to Pelham Humphries, each and every plaintiff, past, present, and future, has an identical claim. In each of the prior cases the deciding courts had jurisdiction over the suit. The third element is satisfied.

The final requirement is that the prior decision be a formal judgment on the merits. Under *res judicata*, a summary judgment is an adjudication on the merits. *Underwood v. Hunter*, 604 F.2d 367, 369 (5th Cir. 1979). Six out of seven of the reported decisions resulted from summary judgment for the

defendants. The only defendant who cannot assert *res judicata* as a defense is Phillips Petroleum company, since neither it nor its predecessors have been parties in prior Pelham Humphries Spindletop litigation. All of the other defendants assert *res judicata* as an additional defense. Summary judgment is GRANTED as to Mobil, Chevron, Amoco, and Texaco.

Defendants Amoco, Mobil, and Phillips filed their original answers to plaintiffs' complaint on March 27, 1989, in the Eastern District of Tennessee. The answer asserted numerous affirmative defenses, some aimed at the merits of the action, some of a procedural nature. Among the defenses asserted are lack of subject matter jurisdiction; failure to state a claim upon which relief can be granted; the Texas two, three, four, five, ten, and twenty-five year statutes of limitations of the State of Texas;[4] the

[4] VERNON'S ANN. TEX. CIV. STATE. Art.5507; VERNON'S ANN. TEX. CIV. STAT.Art. 5509; VERNON'S ANN TEX. CIV.

doctrine of presumed grant or lost deed; and laches. Since summary judgment has been granted as to defendants under the doctrines of *res judicata*, collateral estoppel, and *stare decisis*, it is not necessary to consider the various defenses asserted on the merits of the suit.

This case is meritless. A simple and cursory examination of table of cases in the Federal Digest system would have revealed the result which this court has reached so predictably. It is indeed regrettable that the heirs of Pelham Humphries have needlessly caused to be expended the judicial resources of the United States Courts of Tennessee, Texas, the Court of Appeals for the Sixth Circuit, and the actual resources of the defendants. The eagerness of the plaintiffs and their lawyer to pursue this case in the light of numerous existing final decisions on the same issue may violate the provisions

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STAT. Art. 5510; VERNON'S ANN. TEX. CIV. STAT. Art. 5519.

which require the lawyer to make reasonable inquiry as to the basis of his cause of action prior to filing an action in a United States District Court. Rule 11, FED. R. CIV. P.

The defendants have filed motions for the imposition of sanctions under Rule 11, FED. R. CIV. P. A hearing will be set to act upon the motions. Counsel for all parties will be notified of the hearing, and may present all relevant matters for the court's consideration. The court may or may not request additional information from counsel or the parties.

Lest there be any further misunderstanding as to this court's ruling, take heed: there is no claim available to any heir of Pelham Humphries as to any part, parcel, or portion of the league of land commonly known as the Humphries Survey, nor the minerals extracted therefrom; nor is there any such claim by any heir of Pelham Humphries available to be asserted to that property or

minerals extracted from the league since 1901. "Any heir" of Pelham Humphries means <u>every heir</u>, past, present, or future. This court desperately desires that the ghost of Pelham Humphries will no longer haunt the halls of the United States court system.

"*[T]he Pelham Humphries litigation is over. . .* " Requiescat in pace.

SIGNED this_____ day of June, 1990.

_____

UNITED STATES DISTRICT JUDGE

APPENDIX B

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMON DIVISION

CIVIL ACTION B-289-00423-CA

B.L. PEREGOY, ROBERT H. CARR, DOUGLAS C. PEREGOY, BARBARA ANN PEREGOY §

VS. §

AMOCO PRODUCTION CO., a Division of Standard Oil of Indiana; MOBIL OIL CORPORATION; PHILLIPS PETROLEUM CO.; TEXACO INC.; CHEVRON, INC. §

FINAL SUMMARY JUDGMENT

On this day, came on to be considered the motions for summary filed yb the various defendants in the above entitled and numbered cause, and the court having reviewed the same, and having heard the argument of counsel thereon, is of the opinion that defendants various motions should be granted, as set forth in the memorandum opinion filed this date;

It is, accordingly, ORDERED that defendants' motions for summary judgment are hereby GRANTED, and plaintiffs' action is DISMISSED against all defendants herein.

Costs herein are taxed against the Plaintiffs.

SIGNED this ____ day of June, 1990.

_____

UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

CIVIL ACTION B-89-0423-CA

B.L. PEREGOY, ET AL §

VS. §

AMOCO PRODUCTION CO., ET AL §

MEMORANDUM ORDER

All the defendants in this case have moved for the imposition of sanctions upon the plaintiffs and plaintiffs' counsel under FED. R. CIV. P. 11 (Rule 11).[1] This court has

[1] Rule 11. Signing of Pleadings, Motions and Other Papers; Sanctions. "Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other papers and state the party's address. Except when other wise specifically provided by rule or statue, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by cooborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading,

reviewed the motions and memoranda submitted, and heard oral argument upon the question.

The Fifth Circuit has provided this court with basic guidelines to follow in determining whether to impose sanctions under Rule 11. See *Thomas v. Capital Security Systems, Inc.*, 836 F.2d 866 (5th Cir. 1988). This court is to measure compliance with Rule 11 under an objective, not subjective, standard. *Thomas* at 873.

In the memorandum opinion dated June 18, 1990, which granted summary judgment to these defendants, this court discussed at length the

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motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for nay improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper including a reasonable attorney's fee." (emphasis supplied)

fact that this case is absolutely meritless. A simple and cursory review of cases directly on point with this case[2] would have so revealed. This court finds the plaintiffs' counsel in this case utterly failed to make a reasonable inquiry into either the facts of this case or the law applicable to this case. Such failure is clearly in violation of Rule 11. Counsel for plaintiff in effect admitted that sanctions were appropriate at the hearing on defendants' motion to impose sanctions.

Having found the plaintiffs' counsel violated Rule 11, this court must impose sanctions. *Thomas* at 876. Accordingly, this court imposes the following sanctions against the named plaintiffs and plaintiffs' counsel, Max Wilson:

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[2] *Green v. Texas Gulf Sulphur Co.*, 393 F.2d 67 (5th Cir.), cert. denied, 393 U.S. 977 (1968); *Beasley v. McFaddin*, 393 F.2d 68 (5th Cir.), cert. denied, 393 U.S. 842 (1968); *Glover v. McFaddin*, 205 F.2d 1 (5th Cir.), cert. denied, 346 U.S. 900 (1953); *Jones v. McFaddin*, 382 S.W. 2d 277 (Tex. Civ. App. -- Texarkana 1964, writ dism'd w.o.m.), appeal dism'd, 382 U.S. 15 (1965); *Foster v. Gulf Corp.*, 335 S.W.2d 845 (Tex. Civ. App. -- Beaumont 1960, writ ref'd n.r.e.).

1. Attorneys' fees and expenses payable to Locke, Purnell, Rain & Harrell in the amount of $83,938.66.

2. Attorneys' fees and expenses payable to Texaco Inc. in the amount of $30,708.32.

3. Attorneys' fees and expenses payable to Chevron, Inc., in the amount of $1,100.00

4. All taxable costs of court.

One half of this total is to be paid by the four named plaintiffs, to be borne by them equally; one half of this total is to be paid by Max Wilson individually.

Additionally, this court imposes the following:

1. The sanctions to be paid are to be paid by the plaintiffs and plaintiffs' counsel individually, and not from any litigation fund or money raised to pursue this case;

2. The sanctions to be paid are a penalty, and are not to be deducted by any of those sanctioned as an expense of doing

business on any state or federal income tax return;

3. That no check or other means of reimbursement, either directly or indirectly, shall issue from the litigation fund controlled by B.L. Peregoy to reimburse himself, his wife, any officer of his litigation association, or any attorney for any expense connected to these sanctions;

4. That at plaintiffs' and plaintiffs' counsel's expense, copies of this court's Memorandum Opinion dated June 18, 1990, and of this Memorandum Order shall be mailed to all present and former members of the litigation association;

5. That the Clerk of the Court for the Eastern District of Texas is enjoined from accepting for any lawsuit by any party claiming as an heir of Pelham Humphries and involving any claim to the land known as the Humphries Survey or the Spindletop Oil Field, unless there is first a motion for leave to

file granted by sitting judge in this District;

6. That copies of this memorandum order be forwarded at plaintiffs' and plaintiffs' counsel's expense, by the Clerk of the Court for the Eastern District of Texas to: The United States Treasury, Internal Revenue Service Division; and to counsel in Cause No. 5044, Chancery Court, First Judicial District, Jonesboro, Tennessee, and the Attorney General of Tennessee, Nashville, Tennessee.

This court finds these sanctions are necessary and appropriate to redress the blatant violation of Rule 11 which occurred in this case.

SIGNED this _____ day of October, 1990.

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UNITED STATES DISTRICT JUDGE

APPENDIX D

PEREGOY v. AMOCO PRODUCTION CO.

B.L. PEREGOY, et al.,
Plaintiffs- Appellants,

v.

AMOCO PRODUCTION COMPANY, et al., Defendants-Appellees.

Nos. 90-4535, 90-4834
Summary Calendar.

United States Court of Appeals,
Fifth Circuit.

April 23, 1991.

Alleged heirs of original grantee of land brought suit against petroleum companies to obtain accounting for all minerals extracted from the land. The United States District Court for the Eastern District of Texas, Howell Cobb, J., 742 F.Supp. 372, dismissed suit on summary judgment, and heirs appealed. The Court of Appeals held that summary judgment was proper on basis of stare decisis.

Affirmed.

1. Courts 107

Cases decided on summary judgment based on Texas doctrine of presumed lost deed against other heirs who were, for all material fact purposes, in same position as plaintiffs, was stare decisis, and governed result in plaintiff's case.

2. Federal Civil Procedure 2786

District court did not abuse its discretion by imposing Rule 11 sanctions on plaintiffs who filed their suit even though they were aware of cases involving identical facts decided on summary judgment against similarly situated plaintiffs, and who, when faced with motion for summary judgement invoking those cases, did not even attempt to distinguish their case on any fact basis. Fed.Rules Civ.Proc.Rule 11, 28 U.S.C.A.

Appeals from the United States District Court for the Eastern District of Texas.

Before CLARK, Chief Judge, KING and GARWOOD, Circuit Judges.

PER CURIAM:

The plaintiffs in this case claim to be heirs of the original grantee of a tract of land known as the "Humphries survey" located in southeast Texas. They maintain that the defendants have been trespassing on their land and unlawfully taking their minerals. The district court granted summary judgment for all defendants. 742 F.Supp. 372. We affirm.

In a series of cases known as the "*Humphries* trilogy," this court held that "the absolute non-use of and non-claim to the land by appellants and their predecessors for more than 125 years, when measured against appellees' active use and claim, justify the imposition of a conclusive presumption that

all the Humphries heirs have lost their title." *Humphries v. Texas Gulf Sulphur Co.*, 393 F.2d 69, 72 (5th Cir. 1968); *see also id.* at 75; *Beasley v. McFaddin*, 393 F.2d 67, 68 (5th Cir.), *cert. denied*, 393 U.S. 977, 89 S.Ct. 445, 21 L.Ed.2d 438 (1968). Accordingly, we granted summary judgment for the defendants.

[1] The defendants in today's case maintain that the operative facts are identical to those in the *Humphries* trilogy. They indicate that the plaintiffs in today's case claim to be heirs of the same original grantee as the plaintiffs in the *Humphries* trilogy. They contend that neither the *Humphries* trilogy plaintiffs and their predecessors nor these plaintiffs and their predecessors used or claimed the land for more than a century, whereas the defendants in today's case and their predecessors actively used and claimed the land. Thus, the

defendants argue that summary judgment was proper on the basis of *stare decisis*.

Summary judgment is appropriate when there are no genuine issues of material fact so that the moving party is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986). In the *Humphries* trilogy, we stated: "The Pelham Humphries litigation is over and the Humphries heirs have no title in the league of land." *Humphries*, 393 F.2d at 75. We concluded: "[A]ll Humphries heirs, past, present and future are without title." *Beasley*, 393 F.2d at 69. Because defendants' motion for summary judgment necessarily asserted that plaintiffs in the *Humphries* trilogy, it was incumbent on the plaintiffs to present summary judgment evidence which distinguished their fact situation in this case from the *Humphries* trilogy cases. They mad no attempt to do so.

Plaintiffs argue that *stare decisis* only applies to questions of law and that the *Humphries* trilogy decided questions of fact. Plaintiffs both mischaracterize the *Humphries* trilogy and miss the point of the summary judgment issue here. The *Humphries* cases were decided on summary judgment against other Humphries heirs who were, for all material fact purposes, i the same position as today's Humphries heirs. In fact, the record shows that at least some of these plaintiffs are lineal descendents of*Humphries* cases, we held that, on the facts presented, the defendants were entitled to judgment as a matter of law because of the Texas doctrine of presumed lost deed. The result must be the same in this case because all material summary judgment facts are identical. Summary judgment was correclty entered by the district court.

[2] The district court imposed Rule 11 sanctions on the plaintiffs. Abuse of discretion review applies. *See Cooter & Gell*

v. Harmarx Corp., - U.S.- , 110 S.Ct. 2447, 2461, 110 L.Ed.2d 359 (1990). The record shows that several plaintiffs have created a litigation fund solicited form numerous potential Humphries heirs. The purpose of this fund is attempt to establish claims to the Humphries survey through litigation. The plaintiffs and their counsel filed this action even though they were well aware of the *Humphries* trilogy. Then, when faced with a motion for summary judgment invoking those cases, the plaintiffs did not even attempt to distinguish their case on any fact basis. The district court did not abuse its discretion by imposing sanctions.

The decision of the district court is AFFIRMED.